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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee
on Economic, Social and Cultural Rights

CANADA

1. The Committee considered the third periodic report of Canada on the rights covered by articles 1 to 15 of the Covenant (E/1994/104/Add.14) at its 46th to 48th meetings, held on 26 and 27 November 1998, and adopted, at its 57th meeting, held on 4 December 1998, the following concluding observations.

A. Introduction

2. The Committee expresses its appreciation to the Government of Canada for the submission of its detailed and extensive report, which generally follows the Committee's reporting guidelines, and for the comprehensive written answers to its list of issues. The Committee notes that, while the delegation was composed of a significant number of experts, too many questions failed to receive detailed or specific answers. Moreover, in the light of the federal structure of Canada and the extensive provincial jurisdiction, the absence of any expert particularly representing the largest provinces, other than Quebec, significantly limited the potential depth of the dialogue on key issues. The Committee notes with satisfaction that the Government of Canada engaged in extensive consultation with non-governmental organizations (NGOs) in the preparation of the report, that it submitted a core document (HRI/CORE/1/Add.91) and that it provided supplementary information during the consideration of the report.

B. Positive aspects

3. The Committee notes that, for the past five years, Canada has been ranked at the top of the United Nations Development Programme's Human Development Index (HDI). The HDI indicates that, on average, Canadians enjoy a singularly high standard of living and that Canada has the capacity to achieve a high level of respect for all Covenant rights. That this has not yet been achieved is reflected in the fact that UNDP Human Poverty Index ranks Canada tenth on the list of the industrialized countries.

4. The Committee notes with satisfaction that the Supreme Court of Canada has not followed the decisions of a number of lower courts and has held that section 15 (equality rights) of the Canadian Charter of Rights and Freedoms (the Charter) imposes positive obligations on governments to allocate resources and to implement programmes to address social and economic disadvantage, thus providing effective domestic remedies under section 15 of the Charter for disadvantaged groups.

5. The Committee notes with satisfaction that the Federal Government has acknowledged, in line with the interpretation adopted by the Supreme Court, that section 7 of the Charter (liberty and security of the person) guarantees the basic necessities of life, in accordance with the Covenant.

6. The Committee notes with satisfaction that the Human Rights Tribunal in Quebec has, in a number of decisions, taken the Covenant into consideration in interpreting Quebec's Charter of Rights, especially in relation to labour rights.

7. The Committee notes that, in recognition of the serious issues affecting Aboriginal peoples in Canada, the Government appointed the Royal Commission on Aboriginal Peoples (RCAP), which released a wide-ranging report in 1996 addressing many of the rights enshrined in the Covenant.

8. The Committee welcomes the reinstatement by the Federal Government of the Court Challenges Program, as recommended by the Committee while reviewing the State Party's previous report.

9. The Committee welcomes the Canadian Human Rights Commission's statement about the inadequate protection and enjoyment of economic and social rights in Canada and its proposal for the inclusion of those rights in human rights legislation, as recommended by the Committee in 1993.

10. The Committee views as a positive development the high percentage of women attending university and their increasing access to the liberal professions traditionally dominated by men. The Committee notes that Canada has one of the highest percentages of population having completed post-secondary education and one of the highest percentages of GDP devoted to post-secondary education in the world.

C. Factors and difficulties impeding the implementation of the Covenant

11. The Committee notes that since 1994, in addressing the budget deficits by slashing social expenditure, the State Party has not paid sufficient attention to the adverse consequences for the enjoyment of economic, social and cultural rights by the Canadian population as a whole, and by vulnerable groups in particular.

12. The Committee heard ample evidence from the State Party suggesting that Canada's complex federal system presents obstacles to the implementation of the Covenant in areas of provincial jurisdiction. The Committee regrets that, unless a right under the Covenant is implicitly or explicitly protected by the Charter through federal-provincial agreements, or incorporated directly in provincial law, there is no legal redress available to either an aggrieved individual or the Federal Government where provinces have failed to implement the Covenant. The State Party's delegation emphasized the importance of political processes in this regard, but noted that they were often complex.

13. While the Government of Canada has consistently used Statistics Canada's "Low income cut-off" as a measure of poverty when providing information to the Committee about poverty in Canada, it informed the Committee that it does not accept the low income cut-off as a poverty line, although it is widely used by experts to consider the extent and depth of poverty in Canada. The absence of an official poverty line makes it difficult to hold the federal, provincial and territorial governments accountable with respect to their obligations under the Covenant.

D. Principal subjects of concern

14. The Committee has received information about a number of cases in which claims were brought by people living in poverty (usually women with children) against government policies which denied the claimants and their children adequate food, clothing and housing. Provincial governments have urged upon their courts in these cases an interpretation of the Charter which would deny any protection of Covenant rights and consequently leave the complainants without the basic necessities of life and without any legal remedy.

15. The Committee is deeply concerned at the information that provincial courts in Canada have routinely opted for an interpretation of the Charter which excludes protection of the right to an adequate standard of living and other Covenant rights. The Committee notes with concern that the courts have taken this position despite the fact that the Supreme Court of Canada has stated, as has the Government of Canada before this Committee, that the Charter can be interpreted so as to protect these rights.

16. The Committee is also concerned about the inadequate legal protection in Canada of women's rights which are guaranteed under the Covenant, such as the absence of laws requiring employers to pay equal remuneration for work of equal value in some provinces and territories, restricted access to civil legal aid, inadequate protection from gender discrimination afforded by human rights laws and the inadequate enforcement of those laws.

17. The Committee is greatly concerned at the gross disparity between Aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights. There has been little or no progress in the alleviation of social and economic deprivation among Aboriginal people. In particular, the Committee is deeply concerned at the shortage of adequate housing, the endemic mass unemployment and the high rate of suicide, especially among youth, in the Aboriginal communities. Another concern is the failure to provide safe and adequate drinking water to Aboriginal communities on reserves. The delegation of the State Party conceded that almost a quarter of Aboriginal household dwellings required major repairs and lacked basic amenities.

18. The Committee views with concern the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal people from their lands, as recognized by RCAP, and endorses the recommendations of RCAP that policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party. The Committee is greatly concerned that the recommendations of RCAP have not yet been implemented, in spite of the urgency of the situation.

19. The replacement of the Canada Assistance Plan (CAP) by the Canada Health and Social Transfer (CHST) entails a range of adverse consequences for the enjoyment of Covenant rights by disadvantaged groups in Canada. The Government informed the Committee in its 1993 report that CAP set national standards for social welfare, required that work by welfare recipients be freely chosen, guaranteed the right to an adequate standard of living and facilitated court challenges of federally-funded provincial social assistance programmes which did not meet the standards prescribed in the Act. In contrast, CHST has eliminated each of these features and significantly reduced the amount of cash transfer payments provided to the provinces to cover social assistance. It did, however, retain national standards in relation to health, thus denying provincial "flexibility" in one area, while insisting upon it in others. The delegation provided no explanation for this inconsistency. The Committee regrets that, by according virtually unfettered discretion to provincial governments in relation to social rights, the Government of Canada has created a situation in which Covenant standards can be undermined and effective accountability has been radically reduced. The Committee also recalls in this regard paragraph 9 of General Comment No. 3.

20. The Committee is concerned that newly-introduced successive restrictions on unemployment insurance benefits have resulted in a dramatic drop in the proportion of unemployed workers receiving benefits to approximately half of previous coverage, in the lowering of benefit rates, in reductions in the length of time for which benefits are paid and in increasingly restricted access to benefits for part-time workers. While the new programme is said to provide better benefits for low-income families with children, the fact is that fewer low-income families are eligible to receive any benefits at all. Part-time, young, marginal, temporary and seasonal workers face more restrictions and are frequently denied benefits, although they contribute significantly to the fund.

21. The Committee received information to the effect that cuts of about 10 per cent in social assistance rates for single people have been introduced in Manitoba; 35 per cent in those for single people in Nova Scotia; and 21.6 per cent in those for both families and single people in Ontario. These cuts appear to have had a significantly adverse impact on vulnerable groups, causing increases in already high levels of homelessness and hunger.

22. The Committee notes with concern that, in all but two provinces (New Brunswick and Newfoundland), the National Child Benefit (NCB) introduced by the Federal Government, which is meant to be given to all children of low-income families, is in fact only given to children of working poor parents since the provinces are allowed by the Federal Government to deduct the full amount of NCB from the amount of social assistance received by parents on welfare.

23. The Committee notes with grave concern that with the repeal of CAP and cuts in social assistance rates, social services and programmes have had a particularly harsh impact on women, in particular single mothers, who are the majority of the poor, the majority of adults receiving social assistance and the majority among the users of social programmes.

24. The Committee is gravely concerned that such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada's 10 largest cities have now declared homelessness a national disaster.

25. The Committee is concerned that provincial social assistance rates and other income assistance measures have clearly not been adequate to cover rental costs of the poor. In the past five years, the number of tenants paying more than 50 per cent of their income towards rent has increased by 43 per cent.

26. The Committee is concerned that in both Ontario and Quebec, governments have adopted legislation to redirect social assistance payments directly to landlords without the consent of recipients, despite the fact that the Quebec Human Rights Commission and an Ontario Human Rights Tribunal have found this treatment of social assistance recipients to be discriminatory.

27. The Committee expresses its grave concern at learning that the Government of Ontario proceeded with its announced 21.6 per cent cuts in social assistance in spite of claims that this would force large numbers of people from their homes.

28. The Committee is concerned that the significant reductions in provincial social assistance programmes, the unavailability of affordable and appropriate housing and widespread discrimination with respect to housing create obstacles to women escaping domestic violence. Many women are forced, as a result of those obstacles, to choose between returning to or staying in a violent situation, on the one hand, or homelessness and inadequate food and clothing for themselves and their children, on the other.

29. The Committee notes that Aboriginal women living on reserves do not enjoy the same right as women living off reserves to an equal share of matrimonial property at the time of marriage breakdown.

30. The Committee notes with concern that at least six provinces in Canada (including Quebec and Ontario) have adopted "workfare" programmes that either tie the right to social assistance to compulsory employment schemes or reduce the level of benefits when recipients, who are usually young, assert their right to choose freely what type of work they wish to do. In many cases, these programmes constitute work without the protection of fundamental labour rights and labour standards legislation. The Committee further notes that in the case of the Province of Quebec, those workfare schemes are implemented despite the opinion of the Human Rights Commission and the decisions of the Human Rights Tribunal that those programmes constitute discrimination based on social status or age.

31. The Committee notes that Bill 22, entitled "An act to prevent unionization", was adopted by the Ontario Legislative Assembly on 24 November 1998. The Act denies to workfare participants the rights to join a trade union, to bargain collectively and to strike. In response to a request from the Committee, the Government provided no information in relation to the compatibility of the Act with the Covenant. The Committee considers the Act to be a clear violation of article 8 of the Covenant and calls upon the State Party to take measures to repeal the offending provisions.

32. The Committee is concerned that the minimum wage is not sufficient to provide an adequate standard of living for a worker and his or her family.

33. The Committee is perturbed to hear that the number of food banks almost doubled between 1989 and 1997 in Canada and that they are able to meet only a fraction of the increased needs of the poor.

34. The Committee is concerned that the State Party did not take into account the Committee's 1993 major concerns and recommendations when it adopted policies at federal, provincial and territorial levels which exacerbated poverty and homelessness among vulnerable groups during a time of strong economic growth and increasing affluence.

35. The Committee is concerned at the crisis level of homelessness among youth and young families. According to information received from the National Council of Welfare, over 90 per cent of single mothers under 25 live in poverty. Unemployment and under-employment rates are also significantly higher among youth than among the general population.

36. The Committee is also concerned about significant cuts in services on which people with disabilities rely, such as cuts in home care, attendant care and special needs transportation systems, and tightened eligibility rules for people with disabilities. Programmes for people who have been discharged from psychiatric institutions appear to be entirely inadequate. Although the Government failed to provide to the Committee any information

regarding homelessness among discharged psychiatric patients, the Committee was told that a large number of those patients end up on the street, while others suffer from inadequate housing, with insufficient support services.

37. The Committee views with concern the plight of thousands of "Convention refugees" in Canada, who cannot be given permanent resident status for a number of reasons, including the lack of identity documents, and who cannot be reunited with their families for a period of five years.

38. The Committee views with concern that 20 per cent of the adult population in Canada is functionally illiterate.

39. The Committee is concerned that loan programmes for post-secondary education are available only to Canadian citizens and permanent residents and that recognized refugees who do not have permanent residence status, as well as asylum seekers, are ineligible for these loan programmes. The Committee views also with concern the fact that tuition fees for university education in Canada have dramatically increased in the past few years, making it very difficult for those in need to attend university in the absence of a loan or grant. A further subject of concern is the significant increase in the average student debt on graduation.

E. Suggestions and recommendations

40. The Committee recommends that the State Party consider re-establishing a national programme with specific cash transfers for social assistance and social services that includes universal entitlements and national standards and lays down a legally enforceable right to adequate assistance for all persons in need, a right to freely choser work, a right to appeal and a right to move freely from one job to another.

41. The Committee urges the State Party to establish officially a poverty line and to establish social assistance at levels which ensure the realization of an adequate standard of living for all.

42. The Committee recommends that federal and provincial agreements should be adjusted so as to ensure, in whatever ways are appropriate, that services such as mental health care, home care, child care and attendant care, shelters for battered women and legal aid for non-criminal matters, are available at levels that ensure the right to an adequate standard of living.

43. The Committee calls upon the State Party to act urgently with respect to the recommendations of RCAP. The Committee also calls upon the State Party to take concrete and urgent steps to restore and respect an Aboriginal land and resource base adequate to achieve a sustainable Aboriginal economy and culture.

44. The Committee recommends that the National Child Benefit Scheme be amended so as to prohibit provinces from deducting the benefit from social assistance entitlements.

45. The Committee recommends that Canada's Employment Insurance Programme be reformed so as to provide adequate coverage for all unemployed workers in an amount and for a duration which fully guarantees their right to social security.

46. The Committee recommends that the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, as the case may be, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, providing adequate support services for persons with disabilities, improving protection of security of tenure for tenants and improving protection of affordable rental housing stock from conversion to other uses. The Committee urges the State party to implement a national strategy for the reduction of homelessness and poverty.

47. The Committee calls upon the State party, in consultation with the communities concerned, to address the situation described in paragraph 29 with a view to ensuring full respect for human rights.

48. The Committee recommends that the Government of Canada take additional steps to ensure the enjoyment of economic and social rights for people with disabilities, in accordance with the Committee's General Comment No. 5.

49. The Committee urges the Government to develop and expand adequate programmes to address the financial obstacles to post-secondary education for low-income students, without any discrimination on the basis of citizenship status.

50. The Committee urges the federal, provincial and territorial governments to adopt positions in litigation which are consistent with their obligation to uphold the rights recognized in the Covenant.

51. The Committee again urges federal, provincial and territorial governments to expand protection in human rights legislation to include social and economic rights and to protect poor people in all jurisdictions from discrimination because of social or economic status. Moreover, enforcement mechanisms provided in human rights legislation need to be reinforced to ensure that all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups.

52. The Committee, as in its review of the previous report of Canada, reiterates that economic and social rights should not be downgraded to "principles and objectives" in the ongoing discussions between the Federal Government and the provinces and territories regarding social programmes. The Committee consequently urges the Federal Government to take concrete steps to ensure that the provinces and territories are made aware of their legal obligations under the Covenant and that the Covenant rights are enforceable within the provinces and territories through legislation or policy measures and the establishment of independent and appropriate monitoring and adjudication mechanisms.

53. The Committee encourages the State Party to adopt the necessary measures to ensure the realization of women's economic, social and cultural rights, including the right to equal remuneration for work of equal value.

54. The Committee also recommends that a greater proportion of federal, provincial and territorial budgets be directed specifically to measures to address women's poverty and the poverty of their children, affordable day care, and legal aid for family matters. Measures that will establish adequate support for shelters for battered women, care-giving services and women's non-governmental organizations should also be implemented.

55. The Committee urges the federal, provincial and territorial governments to review their respective "workfare" legislation in order to ensure that none of the provisions violate the right to work freely chosen and other labour standards, including the minimum wage, rights which are not only guaranteed by the Covenant but also by the relevant ILO conventions on fundamental labour rights and labour standards.

56. The Committee calls upon the federal, provincial and territorial governments to give even higher priority to measures to reduce the rate of functional illiteracy in Canada.

57. The Committee recommends that the State Party request the Canadian Judicial Council to provide all judges with copies of the Committee's concluding observations and encourage training for judges on Canada's obligations under the Covenant.

58. The Committee also recommends that since there is generally in Canada a lack of public awareness about human rights treaty obligations, the general public, public institutions and officers at all levels of Government should be made aware by the State Party of Canada's human rights obligations under the Covenant. In this regard, the Committee wishes to make specific reference to its General Comment No. 9 on the domestic application of the Covenant.

59. The Committee recommends that the Federal Government extend the Court Challenges Programme to include challenges to provincial legislation and policies which may violate the provisions of the Covenant.

60. Finally, the Committee requests the State Party to ensure the wide dissemination in Canada of the present concluding observations and to inform the Committee of steps taken to implement these recommendations in its next periodic report.